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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Final Report of the Ad Hoc Working Group on Comparative Experiences with Privatization to the Trade and Development Board

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CONTENTS

		Paragraphs
I.	INTRODUCTION	1 - 7
II.	AN ASSESSMENT	8 - 11
	A. Status of implementation of the work programme	8
	B. Assessment of the methods of work and of results achieved	9 - 11
III.	CONCLUSIONS AND RECOMMENDATIONS	12 - 17

Annexes:

I. Indicative elements for consideration in formulating privatization programmes

II. Terms of reference

III. List of country submissions and panellists' papers

IV. Reports of the Ad Hoc Working Group and documents prepared by the secretariat

V. List of panellists

VI. List of members and other participants

I. INTRODUCTION

1. The Ad Hoc Working Group on Comparative Experiences with Privatization was established by the Trade and Development Board in its decision 398 (XXXVIII) in accordance with paragraph 79 of the Cartagena Commitment. In conformity with its terms of reference, as adopted by the Board (see annex II), the Ad Hoc Working Group has been entrusted with the task of reviewing the experiences of countries with privatization, considering medium- and long-term objectives of privatization processes and factors pertinent to the design and implementation of privatization programmes, elaborating basic elements for consideration in formulating privatization programmes and plans and serving as an ad hoc forum for the presentation of national programmes and plans for privatization as well as for the exchange and dissemination of relevant information.

2. The Ad Hoc Working Group has held 4 sessions over a period of 16 months as follows: first session, 30 November-4 December 1992, second session, 7-11 June 1993, third session, 29 November-3 December 1993 and the fourth session, 5-8 April 1994.

3. Country studies or presentations on privatization have been submitted by Argentina, Australia, Bulgaria, Brazil, Canada, China, Colombia, Croatia, Czech Republic, Egypt, Fiji, Finland, France, Germany, Ghana, Greece, Hungary, Indonesia, Israel, Jamaica, Japan, Jordan, Lithuania, Malaysia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Slovakia, Slovenia, Sri Lanka, Sweden, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Venezuela. Further, the experts serving as panellists in the work of the Ad Hoc Working Group have submitted written contributions. A full list of the country contributions and papers by panellists is given in annex III.

4. At its first session (30 November to 4 December 1992) the Working Group focused on various aspects of the design, implementation and results of privatization programmes including, inter alia, the role of the State, the effects of the macroeconomic environment on privatization, privatization objectives and strategy, the selection of enterprises for divestment and the results of privatization in various countries. It also adopted the work programme of the Ad Hoc Working Group. A summary of the Chairman's concluding statement is contained in TD/B/WG.3/5.

5. At its second session (7 June-11 June 1993) the Working Group examined in depth the objectives of privatization as a part of an overall strategy of fostering private entrepreneurship and private sector development, and their relationship to the techniques and financing of privatization. The exchanges also examined various non-divestiture and divestiture options for privatization, the promotion of transparency and accountability in the privatization process, public enterprise restructuring prior to divestment, valuation, underwriting and the different aspects and sources of financing for privatization transactions. Summaries of the discussions on the techniques and financing of privatization are reproduced in TD/B/WG.3/9.

6. At its third session (29 November-3 December 1993) the Working Group discussed in depth the complex issues of competition and regulation of privatized monopolies, examining subjects such as economic regulation, price and profit caps, interconnection to carrier networks of public utilities, private development of infrastructure and competitive bidding. It also extensively discussed the social impact of privatization and socially related support measures and, in this connection, the incorporation of social considerations into privatization strategies, the impact of privatization on conditions of employment and job security, the provision of infrastructure and public services and consumer welfare, as well as social support measures, including compensation measures, training and retraining, job counselling, assistance for relocation and job creation through the promotion of entrepreneurship and enterprise development. A proposal was made to improve the public awareness and information aspects of the privatization process. Summaries of the discussions on competition and regulation as well as on the social impact of privatization are contained in TD/B/WG.3/13.

7. At its fourth session (5-8 April 1994) the Working Group debated the environmental aspects of privatization and the privatization of pension funds and examined the results of the Ad Hoc Working Group's efforts over the past 16 months. It adopted a set of indicative elements for consideration in the formulation of privatization programmes, reproduced in annex I to this report. Summaries of the discussions on privatization and the environment and the privatization of pension funds are reproduced in TD/B/WG.3/15.

II. AN ASSESSMENT

A. Status of implementation of the work programme

8. The Ad Hoc Working Group has successfully completed its work in line with its terms of reference. However, it recognizes there are a number of issues which deserve a more in-depth analysis and consideration. (In this connection, see para. 17 below.)

B. Assessment of the methods of work and of results achieved

9. The format chosen for the Ad Hoc Working Group's sessions has been extremely successful, focusing on informal meetings, panel-led discussions on specific key topics and exchanges among national experts, including those participating as panellists. The panellists, serving in their private capacities, in addition to submitting valuable written contributions, brought their wide expertise and rich practical experiences with privatization to bear on the discussions (see annex V for the list of panellists). The panellists, individually selected for each topic, were drawn from all geographical regions and a wide diversity of country situations. This formula of an informal in-depth dialogue assisted by expert panellists has contributed to a very constructive and polemic-free environment, setting a reflective and positive tone for all the sessions.

10. In order to assist the work of the Ad Hoc Working Group, the secretariat has prepared a number of excellent reports and issues papers, including "Design, implementation and results of privatization programmes. A cross-country review of national experiences", based on 47 country studies and presentations; "In-depth consideration of (i) Competition and the regulation

of privatized monopolies and (ii) Social impact and socially-related support measures"; "Issues relating to (a) privatization and the environment and (b) the privatization of pension funds"; and "Indicative elements for consideration in formulating privatization programmes". Furthermore, the secretariat has produced three publications of considerable practical value: a "Directory of national focal points dealing with privatization"; an annotated bibliography entitled "Public enterprise restructuring and privatization - a survey of recent literature"; and a document entitled "Activities undertaken by international organizations in the field of privatization", based on replies to an UNCTAD questionnaire. Moreover the secretariat has prepared extensive summaries of the in-depth discussions and exchanges conducted by the Ad Hoc Working Group. The summaries, which have been well received by the participants, are reproduced in the reports of sessions of the Ad Hoc Working Group. As regards the summary of the discussion on the social impact of privatization and socially related support measures, it has been considered by national experts as the first comprehensive statement of the issues involved. Further, it has been suggested that the summary, together with other relevant documents, should be sent as a contribution to the World Summit on Social Development in 1995. Annex IV gives a full list of the documents prepared by the secretariat and the reports of the Ad Hoc Working Group.

11. The rich and constructive discussions, extensive and illuminating country presentations, excellent technical papers submitted by the panellists and high-quality substantive documentation prepared by the secretariat have all contributed to the achievement of very positive and concrete results by the Ad Hoc Working Group. The elements drawn from the lessons learned and insights gained from national privatization experiences have proved invaluable in identifying the measures which work in the privatization process and the factors which can make a real difference in enhancing the design, implementation and results of privatization programmes. It is encouraging to note that the extensive documentation generated by the work of the Ad Hoc Working Group and the results achieved have already been used by countries, for example in research work and in the formulation of policy papers. In an area as complex as privatization, the importance of these accomplishments cannot be over-emphasized.

III. CONCLUSIONS AND RECOMMENDATIONS

12. Drawing on its work, the Ad Hoc Working Group adopted indicative elements for consideration in formulating privatization programmes, as reproduced in annex I to this report. These elements cover the following main topics: general considerations relating to privatization; forms of privatization including non-divestiture and divestiture options and the privatization of infrastructure; framework for privatization relating to the supportive environment, legal framework and machinery for privatization and competition and regulation; and social impact and support measures. The Ad Hoc Working Group recommends that the indicative elements be circulated to Governments and privatization agencies for their use, as appropriate, taking into account their particular country situation.

13. The Ad Hoc Working Group recommends that the reports on all four sessions, as well as its final report, be sent to the World Summit on Social Development in 1995 for its consideration, as appropriate.

14. The Ad Hoc Working Group notes from the secretariat's report on "Design, implementation and results of privatization programmes: a cross-country review of national experiences" (TD/B/WG.3/7/Rev.2) and the national presentations that both multilateral financial institutions and bilateral donor agencies have provided various types of financial and technical assistance to developing countries and countries in transition in support of activities at various stages of the privatization process. The Ad Hoc Working Group recommends that the donor community continue its assistance in order to respond effectively to the needs of these countries.

15. The Ad Hoc Working Group recommends that technical assistance, given in consultation with the recipient countries, be continued and strengthened in the following areas:

- Regulatory framework and institutions to deal with privatization and post-privatization issues;

- Public awareness campaigns;

- Valuation techniques, financial consultancy, e.g. in bidding processes;

- Strengthening of the legal, financial and training framework for private sector development, including the development of micro, small and medium-sized enterprises;

- Social implications of privatization, including employment creation policies, training and human resources development.

The Ad Hoc Working Group recognizes the importance of the use of local technical expertise, where appropriate. It further recommends that due consideration be given to the development of a coherent approach and of cooperation among the international bodies concerned (multilateral financial institutions, specialized agencies and other United Nations bodies and international non-governmental organizations).

16. The Ad Hoc Working Group notes the initiative of the UNCTAD secretariat to strengthen its technical cooperation activities in the area of privatization, taking into account requests of developing and transitional-economy countries, in order to disseminate the concrete results achieved by the Ad Hoc Working Group, and invites potential donors to consider favourably requests by the UNCTAD secretariat for the funding of such activities.

17. The Ad Hoc Working Group recommends that further analysis and consideration of the following issues be undertaken by UNCTAD or, as appropriate, by other international organizations:

(a) Post-privatization policy; case studies of individual privatized firms

(i) Share registry/shareholder relations
(ii) Corporate governance
(iii) Performance criteria, monitoring and evaluation

(b) Infrastructure privatization

(i) Build-Own-Operate/Transfer
(ii) Private provision of public and social services

(c) Privatization, development of capital markets and foreign investment; privatization of pension funds

(d) Privatization and enterprise development, particularly development of small and medium-sized enterprises

(e) Broadening of share ownership; forms of participation of small investors and employees in the privatization process

(f) Privatization, environmental protection and the promotion of environmentally sound technology.

Annex I

Indicative elements for consideration in formulating privatization programmes

INTRODUCTION

1. These indicative elements have been drawn essentially from the exchanges of national experiences undertaken by the Ad Hoc Working Group on Comparative Experiences with Privatization. An attempt has been made to list the main elements which can provide guidelines and options for the formulation of privatization programmes and which Governments or privatization agencies may use, as appropriate, taking into account their particular country situations and experiences.

I. GENERAL CONSIDERATIONS

A. Meaning of privatization

2. Privatization is part of a process of structural adjustment of the public sector of the economy. It involves redefining the role of the State by disengaging the State from those activities which are best done by the private sector, with the overall objective of achieving economic efficiency. It is first and foremost a political process, although it has to be carried out as an economic and commercial exercise.

3. Privatization may involve: (a) non-divestiture options - corporatization, the privatization of management (management contracts, leasing and concessions) and the contracting out of public services; and (b) divestiture options - the privatization of capital. A particular form of privatization is the private development of infrastructure.

4. Privatization may be sequenced by going from non-divestiture (for example, corporatization or management privatization) to divestiture options.

B. Conditions for success

5. Steps that the Government can take:

(a) Making a firm political commitment to privatization and to strengthening the role of the private sector in the national economy;

(b) Clarifying and defining (and, as appropriate, resolving any conflicting) political, economic and social objectives;

(c) Building up a broad-based consensus among the parties affected by privatization (bureaucrats, managers, workers, etc.) and in the public at large;

(d) Promoting competition in the economy;

(e) Establishing a clear but flexible and transparent legal framework for privatization;

(f) Establishing effective machinery, with clear mandates and adequate technical and financial resources, for preparing and managing the privatization process;

(g) Encouraging and creating a supportive enabling environment, including favourable macroeconomic conditions, a well-functioning legal system and adequate financial markets and institutions, for private sector and enterprise development, as well as for job creation;

(h) Establishing a social safety net.

C. Privatization strategy

6. A well-designed privatization strategy can help to give credibility and guidance to the process. The strategy needs to address the issues of concern to employees and managers, as well as consumers, that arise from a fundamental change in the role of the State in relation to the promotion of industrialization, the creation of employment and the provision of infrastructure or social services. Steps that can be taken include:

(a) Defining the broad extent of privatization;

(b) Stating clearly the political, economic and social objectives to be achieved;

(c) Establishing clear guidelines or criteria for valuation, the choice of public enterprises for privatization, and for the choice of buyers;

(d) Selecting techniques and, as necessary, their sequence appropriate to the policy objectives to be attained and the needs of the public enterprises to be privatized; creating confidence in the process, for example by starting with privatizations with a high prospect of success; promoting effective corporate governance, for example through the participation of "core" investors;

(e) Ensuring public transparency and accountability in the privatization process; using competitive bidding to the fullest extent possible, for both non-divestiture and divestiture options;

(f) Mounting a programme to promote public awareness of the value of privatization to the economy so as to contribute to the building up of a broad-based consensus;

(g) Building marketing up front in each privatization operation in order to stimulate potential interest among investors and thus to enhance the value of the public enterprise to be privatized; remembering that, apart from "small privatizations", no two privatizations are the same;

(h) Promoting popular participation in the privatization process through the allocation of a proportion of corporate shares to small investors ("popular capitalism") or through mass privatization;

(i) Addressing the concerns of employees by paying particular attention to their acquired rights, compensation measures for retrenched workers and to

employment protection and job creation measures, as reflected, for example, in the investment and social plans of investors;

(j) Promoting employee participation in the privatization process through the allocation of a proportion of corporate shares, either free or at a discount, to employees ("labour capitalism"); allowing for employment share ownership plans, management or employee buy-outs;

(k) Addressing the concerns of consumers through appropriate regulation of privatized monopolies and machinery to handle consumer complaints;

(l) Taking steps, for example by specifying conditions in sales agreements, in order to prevent abuses such as unauthorized transfers to third parties of privatized enterprises immediately after their divestiture;

(m) Defining the role of foreign participation with regard to large-scale or strategic enterprises and ensuring that privatization procedures provide for fair treatment for potential investors;

(n) Providing for safeguards (such as the use of a "golden share") in strategic enterprises in order, for example, to prevent hostile takeovers; and

(o) Establishing mechanisms or procedures for monitoring the progress and results of privatization, including compliance with commitments made by private investors.

II. FORMS OF PRIVATIZATION

A. Non-divestiture options

1. Types of non-divestiture options

7. Non-divestiture options can help to create the necessary political will and to advance the privatization process by demonstrating the commercial viability of public enterprises. They may serve as important measures in themselves or as preparatory steps to divestiture. Such options include:

(a) Management privatization, including management contracts, leasing and operating concessions;

(b) Restructuring and commercialization or corporatization, to be combined with management privatization, as desired or necessary;

(c) Joint ventures between public and private enterprises;

(d) Contracting out of public services.

2. Measures to enhance the performance of public enterprises

8. The measures that can be taken to improve the performance of public enterprises, whether corporatized or not, include:

(a) Establishing performance agreements with specific targets;

(b) Removing subsidies (if subsidies to meet social or non-commercial objectives are needed, they are to be paid for separately and made transparent);

(c) Establishing a performance evaluation system;

(d) In the case of a management privatization with a sales option, agreement on the option in order to give an incentive to the contractor or lessee to improve the efficiency of the public enterprise; and

(e) Exposing the public enterprises to competition or the threat of competition including the risk of bankruptcy.

3. Restructuring

9. A legal definition of an enterprise, together with a financial audit, is required to establish the liabilities and assets of the enterprise. Restructuring is the process of enhancing the value of the enterprise and can take various forms:

(a) Organizational and labour restructuring, involving re-organization of the public enterprise into more rational or smaller units and any necessary labour shedding;

(b) Financial restructuring or rehabilitation, involving the writing off of excessive debts of the public enterprise;

(c) Operational restructuring, involving the infusion of new investment or technology into the public enterprise;

(d) Ensuring that the title to the fixed assets of the privatized enterprise is established prior to divestiture.

10. Where the public enterprise is to be divested, operational restructuring is to be avoided and left to the buyer to undertake.

11. Restructuring is to be avoided where a public enterprise can be sold "as is".

12. However, organizational and especially financial restructuring may help to put the public enterprise on a sound financial and commercial footing, whether it is to be divested or not. Together with corporatization, it may help to enhance its sale value when it is to be divested. When governments undertake restructuring they should bear in mind the cost of restructuring.

B. Divestiture options

1. Types of divestiture options

13. Divestiture options include:

(a) Direct sale, full or partial, to general investors;

(b) Private placement with "strategic" investors or joint venture partners;

(c) Public share offerings on stock markets (usually for profitable, large-scale public enterprises);

(d) Public auctions (usually for small or medium-sized public enterprises which do not require technology transfer);

(e) Sales to employees or management teams through employee share ownership plans, management or employee buy-outs ("internal privatizations");

(f) Sales to investment or mutual funds;

(g) Mass privatization;

(h) Liquidation, followed by the sale of assets (where the latter can fetch a higher price than the sale of the entire enterprise or where it may be necessary because of excessive strain on the budget).

14. Once a political decision has been taken on a sale, it should be carried out according to a schedule and should not be subject to excessive contingencies.

2. Valuation

15. Where capital markets are deficient, competitive bidding gives market forces a say in the valuation of public enterprises to be sold. Bidding can also help to determine where the valuable assets are located, for example in the case of large-scale public enterprises.

16. Valuations are important in a variety of contexts: initial public offerings, joint ventures, contributions of assets, corporatizations, evaluating bids based on different structures, and negotiated sales. Valuations may also include the valuation of various types of contingent liabilities (guarantees and environmental liabilities). Where there is only one potential buyer there is no substitute for a careful valuation.

3. Underwriting

17. Underwriting involves a cost. It may be necessary to insure against the risk of under-subscription, for example, where the public enterprise is not attractive to investors or where the share issues are large in a relatively weak or bearish capital market. Pricing of a share is a prime determinant of whether or not a share issue should be underwritten.

18. However, underwriting is to be avoided where the shares are so popular that there is every prospect of over-subscription.

C. Privatization of infrastructure

1. Forms of privatization of infrastructure

19. The privatization or private development of infrastructure may involve:

(a) Sale of the infrastructure;

(b) Sale of the infrastructure company through public flotations or to a private investor;

(c) Granting of an operation or maintenance contract;

(d) Sale of development rights through build-operate-transfer schemes;

(e) Sale of ownership and development rights through build-own-operate schemes.

20. Restructuring, together with corporatization, can help to prepare an infrastructure company for sale and to enhance its sales value.

2. Private development of infrastructure

21. The particular characteristics of the private development of infrastructure (substantial up-front investments with small initial revenue streams and long payback periods, combined with monopoly power) create a unique set of incentives and risks for the private sector developer/operator.

22. Monopoly power can be bestowed by the market, i.e. where demand and cost/technological conditions or the small size of the market serve as effective barriers to entry, or granted for a defined period by a contractual concession as part of the incentives to be provided to the private sector developer/operator.

23. Governments may share the risks with the private sector developer/operator. Alternatively, the risks may be assumed fully by the latter and reflected in the tariffs to be charged by it for the use of the infrastructure. Any subsidies to be provided to the private sector developer/operator, for example to meet social objectives, are to be made explicit and transparent.

24. Loan guarantees from the Government or from multilateral financial institutions may be necessary to obtain the necessary financing.

25. Competitive bidding is necessary for the award of development (and ownership) rights and operating concessions. Pre-selection of bidders is essential for this purpose.

26. There may be a role for the donor community to reimburse partially the pre-selected bidders for their bidding costs and to co-finance the cost of feasibility studies in order to enhance the participation of local bidders.

III. FRAMEWORK FOR PRIVATIZATION

A. Supportive environment

27. A supportive enabling environment for privatization and private sector development can facilitate the success of privatization in its implementation and post privatization phases. Political and social stability are necessary in this regard. In addition, steps can be taken to improve the economic, financial and legal aspects. These include:

(a) Creating favourable macroeconomic conditions, including through the promotion of economic liberalization and deregulation and the achievement of monetary, fiscal and exchange rate stability, in order to generate investment, including foreign investment, growth and employment;

(b) Providing adequate infrastructure;

(c) Promoting measures to encourage or facilitate private investment or enterprise development, including measures to attract foreign investment; to mobilize domestic savings through improved financial intermediation, both formal and informal; to reduce public sector borrowing requirements, for example by improving the tax base, through tax reforms and better tax collection; and to provide support, such as support for access to credit, for micro, small and medium-sized business development;

(d) Creating conditions in which the local private sector and foreign investors can compete on equal terms;

(e) Simplifying and deregulating administrative procedures for the development of entrepreneurship and of enterprise development;

(f) Establishing laws and regulations for the development of the private sector and of financial markets and institutions, including, inter alia, business laws (property rights, contract laws, the constitution and operation of companies, accounting and auditing procedures, bankruptcy and liquidation procedures) and laws on financial institutions and markets, foreign direct investment, joint ventures, as well as on legal enforcement procedures.

B. Legal framework and machinery for privatization

1. Privatization laws

28. Such laws may include:

(a) The legal framework, including the machinery, for privatization;

(b) The preparation and methods of privatization, including the legal status of public as well as corporatized enterprises, the Government employees concerned, their pension funds, severance payments, etc.

(c) The procedures and conditions of privatization;

(d) Competition and regulation issues and authorities for privatized monopolies;

(e) Social conditions.

2. Privatization machinery

29. An effective central machinery, under the guidance of a political authority (the Prime Minister or the Cabinet, for example) and vested with clear mandates and adequate technical and financial resources, needs to be

established for preparing and managing the privatization process, including the coordination of policy and of implementation and preparation of privatization plans and programmes.

30. The implementation of privatization operations may be undertaken by the central agency or may be decentralized to sectoral Ministries or other designated bodies, depending on where the balance of cost/efficiency lies. The implementing agency should be structured so as to enable it to act independently of vested interests and pressure groups. In order to ensure the transparency of privatization, in particular in the area of the valuation of assets and of the choice of buyers, the legal framework may provide for the establishment of an independent commission or an ad hoc committee for supervising and/or advising on sales procedures.

C. Competition and regulation

1. Promotion of competition

31. The promotion of competition is central to the success of privatization. While ownership often matters, competition matters even more for the achievement of efficiency gains.

32. Competition may be promoted through competitive market structures and appropriate liberalization and competition policies.

33. In the case of public utilities, pro-competition regulation and a liberal licensing policy are important. Contestable sectors may be separated from the "natural monopoly" carrier network or grid, and the former exposed to competition. Grid-based services may be open to competition by licensing access to the grid to competitive suppliers.

34. A network "natural monopoly" exists where the demand and cost/technological conditions or the small size of the market serve as effective barriers to entry. However, network competition may be promoted by licensing rival networks.

2. Regulation

35. In a monopoly industry, regulation is necessary in order to protect consumer welfare and to promote the efficient functioning of the industry by fostering financial stability and viability and by providing incentives for innovation and efficiency.

36. Forms of economic regulation include:

(a) Price and price structure regulation;

(b) Rate of return regulation; and

(c) Negotiated contractual concession.

37. The steps that Governments can take for the regulation of public utilities include:

(a) Establishing a clear regulatory framework for regulating each public utility with well-defined rules of the game for all the parties concerned (the State, the service provider and consumers);

(b) Establishing the regulatory framework and the regulatory authority before privatizing the public utility;

(c) Creating market structures to allow for maximum competition;

(d) Creating competent regulatory authorities and ensuring their independence from political interference;

(e) Ensuring that the procedures used by the regulatory authorities are transparent and that their decisions are made public;

(f) Rationalizing the structures for related industries in order to keep the number of regulatory bodies to a minimum, and ensuring that these bodies have a high technical standard.

38. When privatizing infrastructure, a negotiated contractual concession may be preferable to a general regulation, giving the investor a more predictable framework. Issues such as price or rate-of-return regulation, as well as provisions for monitoring of security and quality of service should be normally included in the contracts.

IV. SOCIAL IMPACT AND SUPPORT MEASURES

A. Social considerations and assessment

39. Social considerations are an essential component of the process of privatization and need to be built into the process from the beginning and reflected in the strategy for privatization.

40. The effects of privatization on employment and consumer welfare need to be addressed. However, the social balance sheet of privatization goes beyond such effects. It will also have to take into account the effects of privatization on investment and growth, income and wealth distribution, and on the provision and cost of infrastructure and social services arising from the privatization of public utilities and social services.

41. Social subsidies provided, for example, for the supply of services to rural areas, are to be made explicit and transparent.

42. Internal privatizations, including employee share ownership plans, management or employee buy-outs, can provide incentives to employees to improve productivity and to promote the long-term viability of the enterprise.

B. Job security

43. Job security in the privatized enterprises may be promoted through generally-applicable measures to protect employment and its conditions for a specified period after privatization or through enterprise-specific investment and social plans of investors or a combination thereof.

44. If any labour restructuring is to be undertaken, it may be handled better by the Government before divestiture, with appropriate compensation measures, than by the private investor after divestiture. A balance needs to be struck between the concern to guarantee employment through contractual arrangements and the need to ensure the viability of the privatized enterprises, which is an essential part of job security.

C. Support measures

45. Socially-related support measures may include:

(a) Compensation measures, including redundancy or severance packages;

(b) Voluntary early-retirement schemes, together with compensation measures;

(c) Measures to improve skills and job mobility through retraining and vocational training, job counselling, assistance for relocation, etc.;

(d) Job creation measures through the promotion of entrepreneurship and of micro, small and medium-sized business development.

46. Compensation measures should be designed so as to take into account not only the interest of the employees but also the larger interest of society as a whole. In particular, they should not be so generous as to induce massive departures from the privatized enterprises or to pose obstacles to future privatizations.

47. A social safety net, with clear principles spelt out from the beginning, can help to cushion any negative effects of privatization and to win support for the privatization process.

48. Socially-related support measures, together with a social safety net, may be financed from different sources. Apart from using part of the proceeds of privatization for this purpose, loans may also be obtained from multilateral financial institutions.

49. Support for job-creation measures may also be provided through fiscal and regulatory reforms in order to improve the access of micro, small and medium-sized businesses to resources and markets, as well as through policies to improve financial intermediation, both formal and informal, for such businesses.

50. Entrepreneurs in the informal sector can sometimes compete successfully with businesses in the formal sector. Helping successful businesses in the informal sector to graduate to the formal sector can contribute to improved competition and tax revenue for the State.

Annex II

TERMS OF REFERENCE

Ad Hoc Working Group on Comparative Experiences with Privatization

Pursuant to General Assembly resolution 1995 (XIX), as amended, and to A New Partnership for Development: the Cartagena Commitment adopted at the eighth session of the United Nations Conference on Trade and Development, an Ad Hoc Working Group on Comparative Experiences with Privatization is established by the Trade and Development Board with the following terms of reference:

1. To review the experiences of countries with privatization.

2. To consider medium- and long-term objectives of privatization processes taking into account relevant factors, including the diversity of country situations, in order to promote greater efficiency in economic activities, more effective allocation of resources and the dynamism and competitiveness through restructuring of enterprises and/or economic sectors; employment creation; social benefit distribution and economic development in general.

3. To consider factors pertinent to the design and implementation of privatization programmes, such as, inter alia, overall development of the private sector; the role of the State, in particular in determining the legal and regulatory framework for privatization, and the scale and pace of the process; criteria for selecting enterprises to be privatized; the relationship between privatization and domestic financial markets; foreign investment; infrastructure; administrative capacity; patterns of ownership and control; corporate performance and competition; employee motivation; public awareness and support; mechanisms for employment creation and, in general, relationships with social development programmes.

4. To elaborate, as possible guidelines for policy makers, basic elements for consideration in formulating privatization programmes and plans.

5. To serve as a forum for the presentation of national programmes and plans for privatization as well as for the exchange and dissemination of relevant information. In that connection the Ad Hoc Working Group should seek from interested countries the presentation of information on their national experiences and draw on the experience and expertise of non-governmental actors, particularly enterprises, trade unions and the academic community.

6. The work of the Working Group should follow a progressive sequence in accordance with paragraphs 49 to 60 of the Cartagena Commitment. In line with what is set out in the Cartagena Commitment, particularly paragraphs 18 and 47, the Working Group should be inspired by the need to promote international consensus on principles and strategies for policy action at the national and international levels to enhance the development prospects of member States, particularly those of developing countries. It should provide a forum for the exchange of experiences among member States so as to enable them to draw appropriate lessons for the formulation and implementation of policies at the national and international levels and for international economic cooperation.

7. In its work, the Working Group should take due account of the diversity of country situations and experiences. It may base its work on country reviews by the secretariat and seek from relevant countries the presentation of studies on their national experiences. It could also, depending on the issue, seek the participation of, and draw on the experience and expertise of, non-governmental actors, particularly enterprises, trade unions, the academic community and non-governmental organizations as well as representatives of international institutions.

8. The Working Group should identify for consideration areas in which technical cooperation should be strengthened.

9. The work of the Working Group should be coordinated with that of other Committees and Working Groups.

10. The work of the Working Group should complement that of other international bodies while seeking to ensure that no duplication occurs.

11. The Working Group may recommend for the consideration of the Board the establishment of expert groups.

12. The Working Group shall complete its work within two years of the adoption of its terms of reference. It may submit interim reports and shall submit a final report on the results of its work to the Trade and Development Board.

13. The frequency of sessions of the Working Group is to be decided by the Board in accordance with the existing procedures concerning the calendar of meetings. The duration of the sessions should be of five days or less.

Annex III

LIST OF COUNTRY SUBMISSIONS AND PANELLISTS' PAPERS

List of country presentations:

Symbols		Languages
UNCTAD/DSD/Misc.9	Presentation of national experiences with privatization:	English/French
	Argentina	
	Czech Republic	
	France	
	Germany	
	Greece	
	Hungary	
	Malaysia	
	Poland	
	Republic of Korea	
	Senegal	
	Tunisia	
	United Republic of Tanzania	
	United States of America	
TD/B/WG.3/Misc.41	Country presentations and statements:	
	China	English
	Israel	English
	Japan (JNR Reform)	English
	Slovenia	English
	Romania	English
	United Kingdom (The UK experience of telecommunications regulation)	English
TD/B/WG.3/Misc.2	Venezuela	English/Spanish
TD/B/WG.3/Misc.3	Jordan	Arabic/English
TD/B/WG.3/Misc.4	Peru	English/Spanish
TD/B/WG.3/Misc.5	Colombia	English/Spanish
" /Add.1	"	English/Spanish
" /Rev.1	"	Spanish
TD/B/WG.3/Misc.6	Australia	English
TD/B/WG.3/Misc.7	Bulgaria	English
TD/B/WG.3/Misc.8	Finland	English
TD/B/WG.3/Misc.9	Germany	English
" /Add.1	"	"
TD/B/WG.3/Misc.10	Indonesia	English
TD/B/WG.3/Misc.11	Jamaica	English
TD/B/WG.3/Misc.12	Lithuania	English
TD/B/WG.3/Misc.13	Morocco	English

TD/B/WG.3/Misc.14	Netherlands	English
" /Add.1	"	"
TD/B/WG.3/Misc.15	New Zealand	English
TD/B/WG.3/Misc.16	Poland	English
TD/B/WG.3/Misc.17	Portugal	English
TD/B/WG.3/Misc.18	Thailand	English
TD/B/WG.3/Misc.19	Turkey	English
" /Add.1	"	"
TD/B/WG.3/Misc.20	United Kingdom	English
TD/B/WG.3/Misc.21	France	French
TD/B/WG.3/Misc.22	Niger	French
TD/B/WG.3/Misc.24	Sri Lanka	English
TD/B/WG.3/Misc.25	Ghana	English
TD/B/WG.3/Misc.26	Nigeria	English
TD/B/WG.3/Misc.27	Republic of Korea	English
TD/B/WG.3/Misc.28	Egypt	English
" /Add.1	"	Arabic/English
TD/B/WG.3/Misc.29	Brazil	English
" /Add.1	"	"
TD/B/WG.3/Misc.31	United States of America	English
TD/B/WG.3/Misc.32	Greece	English
TD/B/WG.3/Misc.33	Philippines	English
TD/B/WG.3/Misc.34	Pakistan	English
TD/B/WG.3/Misc.35	Sweden	English
TD/B/WG.3/Misc.37	Slovakia	English
TD/B/WG.3/Misc.38	Canada	English
TD/B/WG.3/Misc.39	Norway (Privatization and the environment)	English
TD/B/WG.3/Misc.40	Fiji	English
TD/B/WG.3/Misc.43	Nepal	English
TD/B/WG.3/Misc.44	Croatia	English
TD/B/WG.3/Misc.45	Mexico	English/Spanish

List of panellists' papers

Techniques and financing of privatization

His Excellency, Dr. J.C. Sanchez Arnau	Argentina	Privatization in Argentina
Mr. Thomas Janicki	Germany	Techniques and financing of privatization - some basic observations from the German perspective
Mr. Tissa J.M. Jayasinghe	Sri Lanka	Techniques and financing of privatization: Guidelines
Dr. G. F. Mbowe	United Republic of Tanzania	Transitional support to reforming enterprises

Mr. Neil Murdoch	United States	Techniques and financing of privatization
Dr. Alexandre D. Radygin	Russian Federation	Russian model of privatization

Competition and regulation

Ms. Khamarzan Ahmed Meah	Malaysia	Competition and regulation
Mr. Adrian van der Ven	Netherlands	Competition and the regulation of privatized and corporatized monopolies in the Netherlands
Mr. James A. Waddell	United States	Infrastructure privatization
Mr. Pierre Guislain	World Bank	Divestiture of State enterprises - an overview of the legal framework
Mr. Andrzej Szablewski	Poland	Restructuring and regulatory reform in the Polish energy sector
Mr. Lucas Danho	Côte d'Ivoire	Privatisation du service de télécommunications en Côte d'Ivoire - Problèmes et approches de solutions

Social aspects of privatization

Mr. Brendan Martin	ICFTU/PSI	Towards a new privatization paradigm
Mr. Tissa J.M. Jayasinghe	Sri Lanka	The social impact of privatization
Mr. Jorge Botero	Acción Internacional	Impact of non-governmental organizations on the development of informal economic sectors in Latin America

Privatization and the environment

Mr. H. R. Zayyad	Nigeria	A country presentation The Nigerian Experience

Privatization of Pension Funds

Mr. Walter Schulthess	Argentina	Reforma del Sistema Provisional Argentino: Principios, lineamientos y Proyecciones
Mr. Carlos Soto Perez	Mexico	Pension Funds Privatization
Mr. James Waddell	United States	A shift towards private and defined contribution pension programs

Annex IV

REPORTS OF THE AD HOC WORKING GROUP AND DOCUMENTS PREPARED BY THE SECRETARIAT

Symbols

1. **Reports of the Ad Hoc Working Group on Comparative Experiences with Privatization:**

TD/B/WG.3/5 A/C/E/F/R/S	Report of the Ad Hoc Working Group on Comparative Experiences with Privatization on its first session
TD/B/WG.3/9 A/C/E/F/R/S	Report of the Ad Hoc Working Group on Comparative Experiences with Privatization on its second session
TD/B/WG.3/13 A/C/E/F/R/S	Report of the Ad Hoc Working Group on Comparative Experiences with Privatization on its third session
TD/B/WG.3/15 A/C/E/F/R/S	Report of the Ad Hoc Working Group on Comparative Experiences with Privatization on its fourth session

2. **Reports and notes by the UNCTAD secretariat:**

TD/B/WG.3/7 and Rev.1 and Rev.2 A/C/E/F/R/S	Design, implementation and results of privatization programmes: a cross-country review of national experiences Report by the UNCTAD secretariat
TD/B/WG.3/11 A/C/E/F/R/S	In-depth consideration of: (i) Competition and the regulation of privatized monopolies (ii) Social impact and socially related support measures Issues paper by the UNCTAD secretariat
TD/B/WG.3/7/Rev.2/Add.1 A/C/E/F/R/S	Issues relating to: (a) privatization and the environment (b) privatization of pension funds Note by the UNCTAD secretariat

3. **Background documents:**

UNCTAD/DSD/Misc.6 English	Public enterprise restructuring and privatization - an annotated bibliography, prepared by the UNCTAD secretariat
UNCTAD/DSD/Misc.8/Rev.2 English	Directory of national focal points dealing with privatization, prepared by the UNCTAD secretariat
UNCTAD/DSD/Misc.11 English	Public enterprise restructuring and privatization - a survey of recent literature, prepared by the UNCTAD secretariat
UNCTAD/DSD/Misc.23/Add.1 English	Activities undertaken by international organizations in the field of privatization, replies to the UNCTAD questionnaire

Annex V

LIST OF PANELLISTS

Second session (7-11 June 1993):

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Fourth session (5-8 April 1994):

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Annex VI

List of Members and Participants

Members

Algeria
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Bangladesh
Belgium
Brazil
Chile
China
Colombia
Côte d'Ivoire
Cuba
Czech Republic
Denmark
Egypt
Finland
France
Germany
Ghana
Greece
Guinea
Honduras
Hungary
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Jamaica
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Lebanon
Libyan Arab Jamahiriya
Malaysia
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Senegal
Slovakia
Sri Lanka
Sudan
Switzerland
Thailand
Togo
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Zambia
Zimbabwe

56 members

Observers

Afghanistan
Armenia
Australia
Austria
Bhutan
Bolivia
Bulgaria
Canada
Cameroon
Democratic People's Republic of Korea
Ecuador
El Salvador
Ethiopia
India
Ireland
Israel
Jordan
Lithuania
Madagascar
Malawi
Malta
Mozambique
Nepal
New Zealand
Niger
Oman
Panama
Paraguay
Peru
Philippines
Qatar
Singapore
Slovenia
Spain
Sweden
Syrian Arab Republic
Trinidad and Tobago
United Republic of Tanzania
Uruguay
Venezuela
Viet Nam

41 observers

United Nations bodies

Economic Commission for Europe (ECE) and Economic and Social Commission for Asia and the Pacific (ESCAP).

Specialized agencies:

World Bank; International Monetary Fund; International Labour Office, United Nations Industrial Development Organization; United Nations Development Programme; World Health Organization.

Intergovernmental organizations

European Union; Organization of African Unity; Organization for Economic Cooperation and Development; Commonwealth Secretariat; Asian-African Legal Consultative Committee.

Non-governmental organizations

International Chamber of Commerce; International Confederation of Free Trade Unions; Public Services International; International Co-operative Alliance; International Road Transport Union; World Assembly of Small and Medium Enterprises; World Federation of Trade Unions, World Federation of United Nations Associations; International Air Transport Association.

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